

1 **DECLARATION OF ALFRED C. PFEIFFER, JR., IN**
2 **SUPPORT OF COVAD COMMUNICATIONS**
3 **CORPORATION'S EX PARTE MOTION FOR ORDER**
4 **SHORTENING TIME TO HEAR COVAD**
5 **COMMUNICATIONS COMPANY'S APPLICATION FOR**
6 **PRELIMINARY INJUNCTION**

7 **[PROPOSED] ORDER SHORTENING TIME TO HEAR**
8 **COVAD COMMUNICATIONS COMPANY'S**
9 **APPLICATION FOR PRELIMINARY INJUNCTION**

10 on the following by mail/hand delivery/Federal Express in sealed envelope(s), as respectively
11 noted, with all fees prepaid at San Francisco, California, addressed as follows:

12 **VIA HAND DELIVERY**

13 James B. Young, Esq.
14 David P. Discher, Esq.
15 Pacific Bell
16 140 New Montgomery Street, Room 1405
17 San Francisco, California 94105

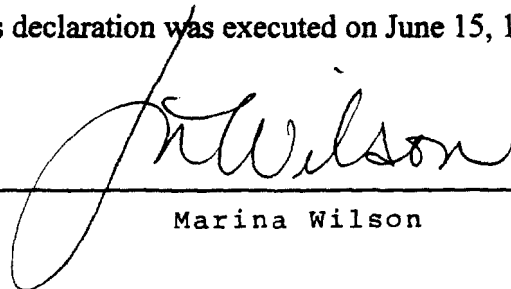
18 **VIA FEDERAL EXPRESS**

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23 **VIA HAND DELIVERY**

24 PACIFIC BELL, a California corporation,
25 c/o Mark E. Ferrara
26 2150 Webster Street, Room 735A
27 Oakland, California 94612

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct and that this declaration was executed on June 15, 1998.


Marina Wilson

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9

10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 COVAD COMMUNICATIONS
14 COMPANY, a California corporation,

15 Plaintiff,

16 v.

17 PACIFIC BELL, a California corporation,

18 Defendant.
19
20

No. C98-1887-SI

**DECLARATION OF THOMAS REGAN
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

**Date: August 14, 1998
Time: 9:00 a.m.
Place: Courtroom 4
Hon. Susan Illston**

21

22 I, Thomas Regan, declare as follows:

23 1. I am presently employed by Covad Communications, Inc. ("Covad") as
24 Director of Collocation. I submit this declaration in support of Covad's Motion for Preliminary
25 Injunction. I have personal knowledge of the facts stated in this declaration, except those matters
26 stated on information and belief and, if called, could and would testify competently to them.

Declaration of Thomas Regan in Support of
Plaintiff's Motion for Preliminary Injunction (C98-1887-SI)

1 2. Before joining Covad in March of 1997, I worked for Pacific Bell for 25
2 years. My most recent position at Pacific Bell was Collocation Product and Implementation
3 Manager, which I held for 2 years. Through my work for Pacific Bell and Covad, I am very
4 familiar with the process by which competitive local exchange carriers (like Covad) interconnect
5 with Pacific Bell's network to provide service to customers in Pacific Bell's territory.

6 3. Covad is a competitive local exchange carrier ("CLEC") focused on
7 providing widespread high speed digital local telecommunications services to residential and
8 business users over local telephone lines through Digital Service Line technology, or "DSL."
9 Covad markets its services to Internet service providers (ISPs) so that their customers can access
10 the Internet and to businesses so that their employees may connect to the corporate server and
11 work from home (this is known as "telecommuting").

12 4. Pacific Bell is an incumbent local exchange carrier ("ILEC"), and for
13 many decades it enjoyed a state-protected monopoly over the provision of local
14 telecommunications service to business and residential users within its incumbent service areas.
15 Pacific's service areas cover the vast majority of the State of California, and Pacific is the local
16 telecommunications service provider to a vast majority of California residential and business
17 users.

18 5. Pacific owns and controls the physical facilities that form the local
19 telecommunications network within its service area. These physical facilities include millions of
20 telephone lines to residential and business users (these telephone lines are often referred to as
21 "local loops") in California, over 600 central offices (called "COs") where the residential and
22 business telephone lines come together and where the local network switching equipment is
23 located, and transmission facilities used to transfer telecommunications transmissions from one
24 CO to another CO (often referred to as "transport").

25 6. Within its vast territory, Pacific is the sole provider of COs. With the
26 exception of extraordinarily limited competition in high density business districts, Pacific is the

1 sole source for local loops and transport as well. Duplication of these physical facilities, even in
2 a single metropolitan area, would be prohibitively costly and time-consuming. As a
3 consequence, alternative facilities are not reasonably or practically available.

4 7. The Telecommunications Act of 1996 recognized that, in order to
5 compete, CLECs like Covad would need access to the ILECs' local telecommunications
6 networks, and the Act provides for access in three different ways. ILECs must (1) provide
7 connections to their networks, through "interconnection agreements;" (2) sell some or all of the
8 individual network components and facilities that make up the local telecommunications network
9 ("unbundled network elements" or "UNEs") to CLECs who wish to combine them into
10 alternative service offerings; and (3) by selling at wholesale local telecommunications service
11 offerings to CLECs who will resell them to the public.

12 8. Covad provides its DSL service by means of a combination of its own
13 equipment, the purchase and leasing of discrete elements of Pacific's physical network and
14 leased access to Pacific's COs where Covad installs its equipment. Because every end-user of
15 local telecommunications service is assigned to a CO, Covad must have access to every CO for
16 every service area in which its end-users reside. Covad must also have transport to connect its
17 equipment from the CO to Covad's Network Data Center and to connect its Network Data Center
18 to the ISPs and corporate networks it serves. It also needs local loops. In April, 1997, Covad
19 and Pacific Bell entered into an Interconnection Agreement with Pacific. A true and correct
20 copy of the relevant portion of the Interconnection Agreement is attached hereto as Exhibit A.

21 9. The placement of CLEC equipment or CLEC-designated equipment on the
22 premises of the ILEC's COs is known as "collocation." Without dependable, timely and
23 affordable collocation, facilities-based CLECs (that is, those CLECs who own at least some of
24 their own physical network facilities) cannot compete effectively with ILECs.

25 10. As part of the Interconnection Agreement, Covad obtained the right to
26 physically collocate its equipment in Pacific's COs and to purchase specific UNEs from Pacific,

1 including unbundled local loops and unbundled dedicated transport. This configuration, if
2 properly provided by Pacific, would allow Covad to provide its local telecommunications
3 services. A graphic representation of Covad's network configuration is attached hereto as
4 Exhibit B.

5 11. Even where it has agreed to provide Covad with physical collocation,
6 Pacific has hindered Covad's ability to provide competing services by insisting that Covad
7 purchase what is known as a collocation "cage." A collocation cage is, literally, a 10 foot by 10
8 foot metal cage-like barrier that separates the physical space allotted to the CLEC's equipment
9 from the remainder of the CO, where Pacific Bell's switching equipment is. Cages take a long
10 time to build because they require extensions of power and air conditioning systems to the area
11 of the CO in which Pacific Bell has chosen for the CLECs. The prices charged by Pacific are
12 extraordinary -- the price for a given cage may be anywhere from approximately \$14,000 to
13 upwards of \$100,000. Covad has already paid Pacific approximately \$1.6 million in collocation
14 cage charges. The cages are an unnecessary waste of space, time, and money, but in order to
15 speed its entry into the market, Covad has continued to order and pay for cages while disputing
16 Pacific's right to demand them.

17 12. Pacific's insistence on caged physical collocation unnecessarily burdens
18 CLECs in general, and Covad in particular. In addition to their expense, cages take a long time
19 to build, thus adding significant delays to the CLEC's market entry, and cages waste space
20 within the COs that would otherwise be available for physical collocation. Pacific does not
21 experience this delay when it installs its own new equipment in its COs.

22 13. Pacific has maintained that there is no feasible alternative to caged
23 physical collocation. Pacific's main justification for the cages is that they are necessary to
24 maintain security, i.e., to prevent Covad personnel from gaining access to or tampering with
25 Pacific's equipment.

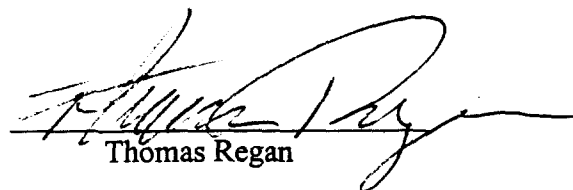
26

1 14. In fact, physical collocation can be accomplished without the use of cages.
2 Another ILEC, US WEST, has signed an interconnection agreement that permits Covad to
3 collocate without the use of a cage, and without building out a special area for collocators, in all
4 fourteen states that US WEST serves. This method of collocation -- without a cage -- is far less
5 expensive. Collocation costs will be approximately \$7,000 per CO, rather than the \$14,000 to
6 \$100,000 charged by Pacific Bell. Also, cageless collocation takes much less time. US West
7 requires only 45 days to complete collocation of Covad's equipment, which is about two and one
8 half times faster than Pacific (if Pacific were to actually make its commitment date).

9
10 15. We have repeatedly asked Pacific to consider cageless collocation, and
11 many months ago provided them with a proposal for cageless collocation. But Pacific has
12 summarily refused our cageless collocation requests, even for CO's in which Pacific alleges that
13 space is exhausted. Nor has Pacific been willing to discuss non-cage security measures that
14 might alleviate Pacific's professed security concerns, while at the same time not subjecting
15 Covad to the onerous cage requirements.

16 16. Nothing in the Agreement, the Telecommunications Act of 1996, the FCC
17 regulations thereunder or the CPUC Tariff requires the use of a cage for collocation. Pacific has
18 no valid justification for requiring cages in light of its duty to provide collocation. Its insistence
19 on the construction of a cage is unreasonable, unnecessarily restrictive, and anticompetitive.

20 I declare under penalty of perjury under the laws of the United States of America
21 and the State of California that the foregoing is true and correct. Executed this 12 day of June,
22 1998, at Santa Clara, California.

23
24 
25 Thomas Regan
26

INTERCONNECTION AGREEMENT
BETWEEN
COVAD COMMUNICATIONS COMPANY
AND
PACIFIC BELL

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INTERCONNECTION AGREEMENT

THIS INTERCONNECTION AGREEMENT ("Agreement"), made as of this 21st day of April 1997, is between Covad Communications Company ("Covad"), a California corporation, and Pacific Bell ("Pacific"), a California corporation.

RECITALS

WHEREAS, a major purpose of the Telecommunications Act of 1996 ("the Act") is to permit and encourage the vigorous competition that provides widespread consumer choice; and

WHEREAS, the most effective way to achieve this purpose is to eliminate any perceived or real market power possessed by some carriers; and

WHEREAS, this Agreement is intended to promote independent, facilities-based local exchange competition by encouraging the rapid and efficient interconnection of competing local exchange service networks; and

WHEREAS, the Parties seek to accomplish interconnection in a technically and economically efficient manner in accordance with all requirements of the Act;

WHEREAS, Section 252 of the Act mandates good faith negotiations between incumbent Local Exchange Carriers and any telecommunications carrier requesting interconnection without regard to the standards set forth in subsections (b) and (c) of Section 251 of the Act;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Covad and Pacific hereby covenant and agree as set forth in this Agreement.

DEFINITIONS

For purposes of this Agreement, certain terms have been defined here and elsewhere in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular shall include the plural. The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other shall not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized, and not defined in this Agreement, shall have the meaning in the Act, unless the context clearly indicates otherwise.

Pacific will not discontinue any unbundled Network Element provided under this Agreement, during the term of this Agreement or extensions without Covad's consent, except (i) to the extent required by network changes or upgrades, in which event Pacific will comply with the network disclosure requirements stated in the Act and FCC regulations thereunder; or (ii) if required by a final order of the Court, the FCC or the Commission as a result of remand or appeal of the FCC's order In the Matter of Implementation of Local Competition Provisions of the Telecommunications Act of 1996, Docket 96-98. In the event such a final order allows but does not require discontinuance, Pacific may, on thirty (30) days written notice, require that such terms be renegotiated and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required or appropriate to reflect the results of such action. In the event that such new terms are not renegotiated within ninety (90) days after such notice, or if the Parties are unable to agree, either Party may submit the matter to the Dispute Resolution Process described herein.

Pacific shall provide Covad access to the following unbundled Network Elements for the provision of telecommunications services by Covad. Covad, at its option, may combine such Network Elements from Pacific with elements of its own network to provide such services. Pacific's prices charged to Covad will be no greater than the cost of providing the Network Element, including a reasonable profit.

2.1. Links. [the Act, Section 271(c)(2)(B)(iv)]

Pacific will make the following unbundled Links available as set forth below:

- Basic Links.
- Assured Links.
- 2-Wire Digital ISDN/xDSL Capable Links.
- T-1/DS1 (4-wire) capable Links.

2.1.1. Description of Link Service. Link Service consists of transport between the minimum point of entry ("MPOE") at an end user premises and a POI in the Pacific Wire Center from which the transport is extended. At its sole discretion, Pacific will provide Link Service over technology that meets the defined parameters for each Link type.

2.1.2. Use and Suitability of Link Service. Link Service may not be used to provide any service that would degrade or otherwise adversely affect Pacific's network services, (e.g., introduce harmful voltages or electrical currents in excess of standards used in common industry practice). Pacific may not introduce any network services that would degrade or otherwise adversely affect existing Covad network services. The Parties further agree to cooperate in implementing engineering guidelines, as they are

developed, that will prevent the above mentioned degradation or adverse affects to each other's network services.

2.1.3. Availability of Link Service. Link Service will be available on an unbundled basis on the Effective Date from all Pacific Wire Centers on a first-come, first-served basis, applicable to all carriers, including Pacific, and subject to the availability of Pacific's facilities and facilities at the MPOE at the premise of Covad's end user customer. However, certain of Pacific's geographical areas are currently served solely via integrated digital loop carrier ("IDLC"). In such areas, Pacific will make alternate arrangements equal in quality to those used by Pacific, to permit Covad to order a contiguous unbundled loop at no additional cost to Covad. At Pacific's option, these arrangements may include, but are not limited to, the following: (i) provide Covad with copper facilities, or (ii) universal digital loop carrier facilities that are acceptable to Covad, or (iii) convert IDLCs to non-integrated systems.

2.1.4. Interconnection to Link Service at Wire Center POI. Covad must connect Link Service either:

- via EISCC to a Covad collocated facility in the Pacific Wire Center from which Link Service is extended; or
- by means of Unbundled Services Cross Connect ("USCC") connected to unbundled dedicated transport; or
- via EISCC to a third party's collocated facility in the Pacific Wire Center from which Link Service is extended.

2.1.5. Link Service Prices.

Pacific will provide Link Service at the prices set forth below until the rates determined by the Commission in the OANAD proceeding (R. 93-04-003/I. 93-04-002) are effective. At such time those rates shall replace the rates below. Alternatively, Covad has the option of paying the Link rates set forth below until December 31, 1999.

The prices set forth herein do not include Commission or FCC mandated surcharges or applicable taxes. For partial months, Pacific will prorate the monthly charge on a per day rate.

Pacific shall charge nonrecurring and monthly recurring rates as set forth below for each Link (which nonrecurring and recurring rates include the EISCC), plus applicable multiplexing, if requested. All Link prices

include any applicable End User Common Line and Carrier Common Line flat rate equivalent charges.

Business Link Zones referred to below are defined as shown in Appendix D. Residence Link Zones referred to below are defined as shown in Appendix E.

2.1.5.1. Basic and Assured Links:

Recurring Rates:

Business (Basic and Assured)

Zone 1	Zone 2	Zone 3
\$13.81	\$15.81	\$20.81

Residence (Basic only)

Zone 1	Zone 2	Zone 3
\$15.21	\$18.31	\$22.71

Nonrecurring rates:

Business Basic Links Zones 1, 2, and 3: The nonrecurring charge for each Link is equal to Pacific's retail nonrecurring charge for measured business service (1MB).

Business Assured Links Zones 1, 2, and 3: The nonrecurring charge for each Link is equal to Pacific's retail nonrecurring charge for Assured PBX Trunks.

Residence Basic Links Zones 1, 2, and 3: The nonrecurring charge for each Link is equal to Pacific's retail nonrecurring charge for flat-rated residence service (1FR), plus a \$50 service charge for each service order at each customer MPOE.

2.1.5.2. 2-Wire Digital ISDN/xDSL Capable Links:

Recurring Rates:

Business 2-Wire Digital ISDN/xDSL Capable Links

Zone 1	Zone 2	Zone 3
--------	--------	--------

\$20.06	\$23.06	\$30.56
---------	---------	---------

Residence 2-Wire Digital ISDN/xDSL Capable Links

Zone 1	Zone 2	Zone 3
\$22.06	\$25.06	\$32.56

Nonrecurring rates:

Business 2-Wire Digital ISDN/xDSL Capable Links Zones 1, 2, and 3: The nonrecurring charge for each Link is equal to Pacific's retail nonrecurring charge for business basic rate ISDN.

Residence 2-Wire Digital ISDN/xDSL Capable Links Zones 1, 2, and 3: The nonrecurring charge for each Link is equal to Pacific's retail nonrecurring charge for residential basic rate ISDN.

2.1.5.3. T-1/DS1 (4-Wire) Capable Links:

Availability rates and terms for T-1/DS1 (4-Wire Capable Links) will be provided upon request of Covad and added to this Agreement by written amendment.

- 2.1.6. **Cancellation Charge.** A cancellation charge may apply if Covad cancels an order for any type of Link after provisioning has begun and prior to completion, as set forth in Pacific's Schedule Cal. P.U.C. Tariff No. 175-T, Section 5.
- 2.1.7. **Assigned Telephone Number.** Each Party is responsible for assigning any telephone numbers necessary to provide its end users with Exchange Service.
- 2.1.8. **Billing and Payment.** Pacific will bill and Covad will pay Link Service bills in accordance with Pacific's billing, bill dispute resolution, late payment charges and disconnection for nonpayment requirements as set forth in Pacific's Schedule Cal. P.U.C. Tariff No. 175-T, Section 5.
- 2.1.9. **Ordering.** Covad must order Link Service via ISR forms using Pacific's CESAR System. Pacific will provide Covad access to CESAR at no charge and initial training in its use for ordering Link Service.

- 2.1.10. Provisioning Intervals. Basic, Assured and 2-Wire Digital ISDN/xDSL Capable Links are provided within the same period of time Pacific provisions its like exchange service at that time in the same area using similar facilities requiring field work (wiring). T-1/DS1 Links will have intervals identical to the intervals for Pacific's provisioning of its own hi-cap services. Intervals for a project (20 or more lines to a single end user MPOE on a request at the same time) are established on a negotiated interval basis between Covad and Pacific's Interconnection Services Center ("ISC").
- 2.1.11. Service Coordination. Link Service will be provided on the due date and, if requested, will be provided during a 4-hour window (either 8 a.m. to 12 p.m. or 1 p.m. to 5 p.m.). Additional service coordination is charged as additional labor billing per Pacific's Schedule Cal. P.U.C. Tariff No. 175-T, Section. 13. Links are normally provisioned from 8 a.m. to 5 p.m. Monday through Friday.

The following coordination procedures apply only to Business Basic Links ordered as a project (20 or more lines to a single end user MPOE on a request at the same time): On each Link order in a Wire Center, Covad will contact Pacific and the Parties will agree on a cutover time at least two business days before that cutover time. The cutover time will be defined as a 60 minute window within which both the Covad and Pacific personnel will make telephone contact to begin the cutover activity. Coordination for Business Basic Links meeting the definition of a project (in this paragraph) will be provided by the Parties at no charge.

Within the appointed 60 minute cutover time, the Covad person will call the ISC and when the ISC is reached in that interval such work will be promptly performed. If the Covad person fails to call or is not ready within the appointed interval and if Covad had not called to reschedule the work at least two hours prior to the start of the interval, Covad and Pacific will reschedule the work order and Covad will pay the nonrecurring charge for the Link or Links scheduled for the missed appointment. In addition, nonrecurring charges for the rescheduled appointment will apply.

If the ISC is not available or not ready at any time during the 60 minute interval, Covad and Pacific will reschedule and Pacific will waive the nonrecurring charge for the Link or Links scheduled for that interval and the rescheduled installation. If the ISC is available but the work is not begun promptly (within 15 minutes of the ISC contact), Pacific will waive the nonrecurring charge for the Link or Links scheduled for that interval. The standard time expected from disconnection of service on a line to the connection of the Link to the Covad collocation arrangement or transport

is 5 minutes. If Pacific is solely responsible for a line being out of service for more than 30 minutes, Pacific will waive the nonrecurring charge for that Link. If unusual or unexpected circumstances prolong or extend the time required to accomplish the coordinated cut-over, the Party responsible for such circumstances is responsible for the reasonable labor charges of the other Party. Delays caused by the customer are the responsibility of Covad.

In addition, if Covad has ordered INP as part of the Link installation, Pacific will implement the INP service coincident with the Link installation; provided, separate INP nonrecurring charges will apply, where appropriate.

2.1.12. Maintenance and Testing. Covad is responsible for receiving and coordinating resolution of all end user trouble reports involving Link Service. Covad will isolate any trouble to the Link portion of the service before contacting Pacific's ISC to report the trouble. Pacific will charge Covad additional labor billing charges when the trouble is referred to Pacific and the trouble is found to be either on the customer side of the MPOE or on the Covad side of the POI or collocation POT Bay.

2.1.13. Responsibilities of the Parties.

2.1.13.1. Thirty days prior to submitting any Link Service orders Covad shall provide to Pacific forecasts of number of Links at a Wire Center level. This includes associated additional line ("ADL") requirements when Pacific's primary residential POTS service is not to be disconnected in the establishment of Link Service. Covad shall provide such forecasts on a semi-annual basis.

2.1.13.2. The Parties agree that Covad will be the single point of contact for its end user customers.

2.1.13.3. Pacific will not provide repair or other assistance to Covad end user customers except to refer such persons who call Pacific to Covad. Covad will provide Pacific with Covad's toll-free service referral number.

2.1.13.4. If, and only if, Covad's end user customer controls access to the MPOE, Covad must ensure that Pacific has access to the MPOE at the Covad end user customer's premises as described in Pacific's Schedule Cal. P.U.C. Tariff No. A2, Section 1.19.

2.1.13.5. Covad warrants that for each end user for whom Covad orders disconnection of Pacific exchange service, Covad has received

proper authorization from that end user to order such disconnection. Covad shall obtain and verify such authorization using standard industry practices, such as in certain circumstances third-party verification.

2.1.13.6. The Parties agree to abide by existing and future Commission rules that address slamming of local exchange customers by LECs.

2.1.13.7. Covad is responsible for providing end user customer listing information to obtain E9-1-1 Service, Directory Assistance (411) and/or Directory listings. Such listing information will be submitted to Pacific via electronic transfer whenever practicable. These services are provided pursuant to Pacific's tariffs, except as modified by this Agreement, and are subject to Commission requirements.

2.1.13.8. If Pacific terminates or Covad disconnects any Link Service, Pacific will have no obligation to have any communication with Covad's customer in connection with such termination or disconnection.

2.2. Transport. [the Act, Sec. 271(c)(2)(B)(v)]

Pacific will make available unbundled local transport as described in Appendix F of this Agreement.

2.3. Ports/Local Switching. [the Act, Section 271(c)(2)(B)(vi)]

Pacific will make available unbundled local switching and line side Ports as described in Appendix F of this Agreement.

2.4. Cross Connects.

Pacific will make available unbundled Cross Connects between Covad's collocation arrangements and any interconnection to Pacific's unbundled Network Elements. Rates for unbundled Cross Connects, other than the EISCC described above, are listed in Appendix F.

2.5. Multiplexing.

Pacific will make available multiplexing services in connection with Pacific's unbundled transport or other Pacific services or Pacific's unbundled Network Elements. Rates for multiplexing services are listed in Appendix F.

2.6. Nondiscriminatory Access to Databases and Associated Signaling [the Act, Section 271(c)(2)(B)(x)]

Pacific will make available, as described elsewhere in this Agreement, interconnection to its SS7 signaling network to enable signaling necessary for call routing and completion between the Parties. Pacific will also make available unbundled SS7 signaling links (i.e., A, and D links) for connection to Pacific's STPs.

Pacific will make available access to Toll Free Service and LIDB databases through its STPs on a per query basis. If any additional databases are determined to be required under the Act as necessary for call routing and completion, Pacific will make such databases and associated signaling available to Covad. Rates for access to databases and associated signaling are listed in Appendix F.

2.7. Forecasts for Certain Unbundled Network Elements.

For the first six months after Covad's first order for any Unbundled Network Element (UNE), Covad shall provide to Pacific forecasts of the number of each such UNE arrangement at a LATA level. Thereafter, Covad shall make a good faith effort to provide such forecasts to Pacific at a Wire Center level. Covad shall provide forecasts to Pacific on a semi-annual basis.

2.8. Interconnection and Network Element Request Process.

Any request for interconnection or access to an unbundled Network Element that is not already available as described herein shall be treated as a an Interconnection and Network Element Request (INER).

Pacific shall use the INER Process to determine technical feasibility of the requested interconnection or Network Elements and, for those items found to be feasible, to provide the terms and timetable for providing the requested items.

2.8.1. Either Party may identify an unbundled Network Element that is not currently available in Pacific's network, by providing written notice to the other Party, which notice shall include a description of the Network Element adequate to determine technical feasibility and development requirements.

2.8.2. The Parties agree to immediately work together to determine (a) the technical feasibility of the request and (b) the requirements to develop the request, and the anticipated cost of developing the quote. If the Network Element is identified by Covad, Pacific shall be allowed a commercially reasonable period of time to evaluate the technical feasibility of the

request and the requirements to develop the requested Network Element. Notwithstanding the foregoing, if the Parties cannot agree within forty-five (45) days (or such other period of time as may be mutually agreeable), whether the Network Element is technically feasible, or on the requirements necessary to develop the Network Element, the Parties shall use the Dispute Resolution Process set forth herein to this Agreement.

2.8.3. The costs of developing the unbundled Network Element, which includes, but is not limited to, the cost of developing the quote, shall be recovered from any entity which utilizes the Network Element so identified, including Pacific and its affiliates. In addition, Covad shall pay its share of Pacific's costs of developing any Network Element, not identified in this Agreement (including, but not limited to, the cost of developing the quote) if Covad requests development of the Network Element but subsequently determines not to purchase the Element. In all cases, Covad and Pacific shall meet and confer on the amount of such costs, each Party's respective share of such costs, and the method of recovery. In the event the Parties cannot agree on the amount and method of recovery, the Parties shall track their respective development costs and will use the Dispute Process set forth herein to this Agreement. Any determination made in Dispute Resolution shall be subject to modification by a subsequent decision of the Commission. In no event shall either Party allow the pendency of a dispute concerning development costs to delay analysis or implementation of the Network Element.

2.8.4. Development costs are those one-time costs incurred to design, create and test a new unbundled Network Element or new form of access to an unbundled Network Element.

2.8.5. Implementation costs are those costs incurred for the development of the capability to order, bill, provision and maintain the unbundled Network Element or unbundled Network Element Combination. Pacific's recovery of its implementation costs, if any, will be specified by Amendment to this Agreement.

2.8.6. The charge(s) for unbundled Network Elements requested pursuant to the process above shall be specified by amendment to this Agreement.

3. NONDISCRIMINATORY ACCESS TO POLES, DUCTS, CONDUITS AND RIGHTS OF WAY [the Act Section 271(c)(2)(B)(iii)]

3.1. Each Party will provide the other Party access to its poles, ducts, conduits in, on or under public and private rights-of-way and property and to the rights-of-way themselves on rates, terms and conditions that are consistent with 47 U.S.C. §224 and that are no less favorable than the rates, terms and conditions available to any

as defined for billing Pacific in Pacific's Schedule Cal. P.U.C. Tariff No. 175-T, Section 13 and in Covad's Cal. P.U.C. tariff.

10. **TELECOMMUNICATIONS SERVICES AVAILABLE FOR RESALE [the Act Section 271(c)(2)(B)(xiv)]**

The Parties agree that Pacific will provide telecommunications services to Covad for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3) of the Act. Pacific's prices charged to Covad for resold services will be the resale rates determined by the Commission. With respect to those Pacific resale services for which the Commission has not yet set a resale discount, the interim price shall be set at 17% below Pacific's retail rate for the service or such greater discount as is made available to any other entity. Once the Commission establishes a resale discount for any such service, that rate will replace the 17% discount, unless a greater discount is made available to any other entity, in which case Covad, upon request, will be entitled to that greater discount.

11. **COLLOCATION AND MID SPAN MEETS**

Pacific shall permit collocation of any type of equipment used or useful for interconnection or access to unbundled Network Elements, in accordance with the Act and sections 579 through 582 of the FCC's First Interconnection Order. Such equipment includes but is not limited to transmission equipment, such as optical terminating equipment and multiplexers, equipment for the termination of basic transmission facilities, equipment for the termination and multiplexing of ISDN/xDSL loops and such additional types of equipment that may be agreed to by the Parties or designated in Future FCC or Commission rulings. If a request by Covad to collocate is denied on the basis of the equipment to be installed by Covad, Pacific shall prove to the Commission that such equipment is not "necessary" as defined by the FCC for interconnection or access to unbundled Network Elements.

11.1. Physical Collocation.

Pacific will provide for physical collocation of transport and termination equipment necessary for interconnection of Covad's network facilities to Pacific's network or access to unbundled network elements at its Wire Center premises. Such collocation shall be provided on a non-discriminatory basis according to the rates, terms and conditions contained in Pacific's Schedule Cal. P.U.C. Tariff No. 175-T, Section 16, except as modified below.

Listed below are the rates that Covad shall pay for physical collocation at Pacific's Wire Center premises, along with other terms and conditions that will apply with respect to such physical collocation, beginning with the effective date of this Agreement:

11.1.1. Rates

- 11.1.1.1. All monthly rates and nonrecurring charges set forth in Section 16.7.1(A)(1) shall be charged at 65% of the rates stated;
- 11.1.1.2. The monthly rate set forth in Section 16.7.1(B)(1) shall be charged at 75% of the rate stated;
- 11.1.1.3. The monthly rates set forth in Section 16.7.1(C)(1) shall be reduced to zero;
- 11.1.1.4. The nonrecurring charges set forth in Section 16.7.1(D)(1) shall be charged at the greater of \$2,000 or the amount stated in the tariff;
- 11.1.1.5. The second sentence and the proration chart of Section 16.3.4 of Pacific's Schedule Cal. P.U.C. Tariff No. 175-T shall be changed to read:

The costs will be prorated and the prorated share refunded to previous collocater(s) as additional collocaters use collocated services at that location within 60 months of when the billing for the first collocation space at that location begins, using the following schedule:

Collocator	Nonrecurring Charge	Refund
1st	100%	NA%
2nd	50%	50%
3rd	33.33%	16.67%
4th	25%	8.33%
5th	20%	5%
6th	16.67%	3.33%
7th	14.29%	2.38%
8th	12.5%	1.79%
9th	11.11%	1.39%
10th	10%	1.11%
11th and beyond	0%	

11.1.2. Terms

- 11.1.2.1. Pacific agrees that it shall continue to make physical collocation available under the terms of this Agreement and its tariffs. Any requirement for relocation or eviction of collocated facilities must allow for reasonable due process including, but not limited

to, either Party seeking Commission approval if the Parties cannot reach mutual agreement.

11.1.2.2. Should multiplexing via EISCC between Covad and another party's collocated network facility in Pacific's Wire Center be found to be required under the Act or offered to another party, Pacific will provide this capability to Covad.

11.1.2.3. Notwithstanding any provisions contained in Pacific's Schedule Cal. P.U.C. Tariff No. 175-T, Section 16, Covad may place Digital Loop Carrier of its choosing in its collocation space, including shared space collocations described below, for connection of Covad's network to Pacific's network.

11.1.2.4. Pacific agrees to provide Covad with reasonable advance notice, under the Notice provisions of this Agreement, of any proposed modifications to Pacific's tariff regarding physical collocation, except for the addition of Wire Centers and new types of EISCCs.

11.2. Shared Space Collocation

Where sufficient space exists, and upon request, Pacific will provide for collocation on a shared space basis with each collocater's area defined within the shared space. However, shared space collocation will not be made available in Wire Centers where at least one conventional physical collocation installation has already been installed. Such defined space shall, at a minimum, be sized to permit the placement of up to two (2) bays of collocater-provided equipment. Any equipment allowed under 11.1 for Physical Collocation will be allowed under Shared Space Collocation. Access to the collocation space will be via a common entry point and it shall be the sole responsibility of the collocater to provide for any additional security measures to protect its equipment. Such security measures shall be limited to covers or lockable cabinet doors placed directly on the equipment bays of the collocater.

The following charges shall apply for shared space collocation:

11.2.1. The recurring charge for two (2) bays in a shared space collocation shall be \$265.00 per month.

11.2.2. The nonrecurring charge for two (2) bays in a shared space collocation shall be \$5,300.00.

11.2.3. The infrastructure charge for shared space collocation shall be \$25,000.00 and will be refunded on a prorated basis to the first five shared space

collocators as additional shared space collocators utilize shared space collocation at that location within 60 months of when the billing for the first shared space collocation space at that location begins, based on the proration schedule set forth above for physical collocation.

If Covad requests and Pacific provides a shared collocation arrangement as described above, and no other collocator orders and places its equipment in such shared space arrangement within two (2) years after Covad collocates in such space, Pacific reserves the right to reconfigure such space into a suitable single-occupant collocation space. Upon request by Pacific, Covad will reasonably agree to such reconfiguration after one year has elapsed from the time Covad has collocated in such space. The reconfigured space shall only be large enough to enclose the two bays of equipment placed by Covad, along with adequate space for access to the cage, and any other safety standards normally applied to physical collocation facilities by Pacific. Covad will be charged a pro-rated monthly collocation space charge based on the square footage of the reconfigured space in proportion to a standard 10 foot by 10 foot collocation space. Covad will not be charged for the cost of reconfiguring the space. If, after two years from the first placement of a shared space collocation arrangement at Covad's request, such arrangements are on average no more than one-third occupied, the Parties agree to renegotiate Pacific's obligation to continue to offer shared space collocation arrangements.

11.3. Microwave Collocation

Where technically feasible, Pacific will provide for physical collocation of microwave equipment (limited to transport and termination equipment) necessary for interconnection of Covad's network facilities to Pacific's network or access to unbundled network elements on the roofs of Pacific's Wire Centers. Such collocation shall be provided in accordance with the rates, terms and conditions set forth above with respect to physical collocation, plus reasonable recurring and nonrecurring rates for placement of the microwave equipment.

11.4. POT Bay Engineering

The Parties agree that Covad will engineer and pre-provision its side of the POT Bay in physical (including shared space) collocation arrangements.

11.5. Virtual Collocation

Pacific will provide for virtual collocation only where and if Pacific has demonstrated and the Commission has determined that physical collocation is not practical for technical reasons or because of space limitations.

Rates and terms for virtual collocation will be made available on a reasonable and non-discriminatory basis. Rates for virtual collocation will be approximately the same as physical collocation. The Parties agree to cooperate in selecting equipment and establishing installation and operating procedures for virtual collocation in the event that the use of virtual collocation becomes necessary.

The Parties agree that the equipment used in a virtual collocation space shall be purchased by Covad and then sold to Pacific for one dollar (\$1.00). Covad shall retain the right to repurchase the equipment from Pacific for one dollar (\$1.00).

11.6. Mid-Span Meet Arrangements

The Parties may also choose to interconnect via a Mid Span Meet. Such interconnection shall be limited to facilities provided for the interconnection of any local exchange or jointly provided switched access traffic between the Parties.

11.6.1. Physical Arrangements of Mid Span Meets: In a Mid Span Meet, each Party extends its facilities to meet the other Party. The point where the facilities meet is the Mid Span point. Each Party bears its own costs to establish and maintain a Mid Span Meet arrangement. However, the Parties also agree that a technical arrangement for a Mid Span Meet may involve one Party placing and extending its fiber facilities to the Wire Center of the other Party, with sufficient additional length on the fiber to permit the receiving Party to terminate the fiber without requiring splicing of the fiber facilities prior to the terminal equipment in the receiving Party's Wire Center. In this situation, the Parties will negotiate reasonable compensation to be paid to the Party extending the facilities for the associated labor, materials, and conduit space used in extending its facilities beyond a negotiated Mid Span point.

11.6.2. Engineering Specifications: The Parties agree to establish technical interface specifications for Mid Span Meet arrangements that permit the successful interconnection and completion of traffic routed over the facilities that interconnect at the Mid Span Meet. The technical specifications will be designed so that each Party may, as far as is technically feasible, independently select the transmission, multiplexing, and fiber terminating equipment to be used on its side of the Mid Span Meet. Requirements for such interconnection specifications will be defined in joint engineering planning sessions between the Parties. The Parties will use good faith efforts to develop and agree on these specifications within 90 days of the determination by the Parties that such specifications shall be implemented, and in any case, prior to the establishment of any Mid Span Meet arrangements between them. In the event the Parties cannot agree on the technical specifications required, the Parties will, after discussion at the Vice Presidential level, interconnect